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M. YEE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ZELLA MAYE FREEMAN,	)	CASE NO. 1:05-CV-00328-OWW-SMS
	)	
Plaintiff,	)	<b>DEFENDANTS' EX PARTE APPLICATION</b>
	)	<b>REQUESTING EXTENSION OF TIME TO</b>
vs.	)	<b>FILE MOTION FOR RECONSIDERATION</b>
	)	<b>AND ORDER</b>
CITY OF FRESNO, R. GARRISON (F.P.D.	)	
Badge No. 780), MARK A. YEE (F.P.D.	)	Local Rule 6-142(c)
Badge No. 692), J. CAPRIOLA (F.S.O. Badge	)	
No. 7622), I. BARRIMOND (F.S.O. Badge	)	
No. 1153), J. HOLLINS (F.S.O. Badge No.	)	Trial Date: April 10, 2007
2346), R. PEREZ (F.S.O. Badge No. 6169),	)	
A. SIMONSON (F.S.O. Badge No. 9364),	)	
inclusive,	)	
Defendants.	)	

Defendants hereby submit an ex parte application seeking an extension of time to file a motion for reconsideration of the Court's December 26, 2006 Order granting in part and denying in part Defendants' motion for summary judgment.

**A. Attempt to Meet and Confer**

On January 2, 2007, Defense counsel contacted plaintiff's counsel's (Wesley E. Stupar) office to discuss with him the possibility of entering into a stipulation granting Defendants' an

1 extension of time to file a motion for reconsideration. Mr. Stupar was not available and a  
2 detailed message was left on his voice mail. Defense counsel also sent Mr. Stupar an electronic  
3 mail regarding same. (See, Declaration of Erica M. Camarena) As of the time of filing this ex  
4 parte application, Defense counsel had not received a response from Mr. Stupar.

5 Defense Counsel will be leaving the country on January 2, 2007, and therefore needs to  
6 resolve this issue immediately. (See, Declaration of Erica M. Camarena) As such, this request  
7 is being filed without waiting for a response from Mr. Stupar.

8 **B. Request is Timely**

9 The purpose of this request is to allow Defendants an extension of time to file a motion  
10 for reconsideration of the Court's Order regarding Defendants' motion for summary judgment  
11 under Federal Rules of Civil Procedure 59(e). Pursuant to the Rule, Defendants have 10 days  
12 after the date of entry of judgment to file such a motion. Although the Court issued its Order on  
13 December 22, 2006, it was not filed and served until December 26, 2006. Therefore, this  
14 request for an extension of time is timely.

15 **C. Good Cause to Seek Extension**

16 Defendants' motion for reconsideration will only address the issue of the Court's denial  
17 of summary judgment as to Defendant Ian Barrimond. Defense counsel was present at the  
18 hearing on the motion and was of the understanding that the Court granted the motion as to Ian  
19 Barrimond. Specifically, the Court represented that the case would proceed as "Freeman v.  
20 Garrison", and that all other Defendants would not have to stand trial.

21 On December 27, 2006, Defendants contacted Peggy Crawford, the Court Reporter who  
22 transcribed the hearing to order an expeditious copy of the hearing transcript. Defense counsel  
23 was informed that Ms. Crawford was out of the office from December 22, 2006 until January 2,  
24 2007. (See, Declaration of Erica M. Camarena) A copy of the transcript was ordered.

25 Additionally, defense counsel is leaving the country today (January 2, 2007) and is  
26 expected to return on January 16, 2007. (See, Declaration of Erica M. Camarena) Even  
27 assuming Ms. Crawford is able to produce the hearing transcript upon her return, there is no  
28 conceivable way that counsel will be able to review the hearing transcript, prepare, and file a

1 motion for reconsideration in one day.

2 There is no prejudice to Plaintiff as this matter can be resolved well in advance of the  
3 trial date set for April 10, 2007.

4 As such, Defendants respectfully request ex parte an extension of time to file a motion  
5 for reconsideration. Defendants can have their motion filed by Monday, January 29, 2007, with  
6 a hearing date on March 5, 2007.

7 DATED: January 2, 2007

8 WEAKLEY, RATLIFF, ARENDT & McGUIRE, LLP

9  
10 By: /s/ Erica M. Camarena  
11 Erica M. Camarena  
12 James D. Weakley  
Attorney for Defendants

13 **IT IS SO ORDERED.**

14 IT IS SO ORDERED.

15 **Dated: January 5, 2007**  
16 emm0d6

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE